

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 7 of 13

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-24 were pending in the present application prior to this Amendment. In the Office Action mailed September 5, 2007, claims 1-24 were rejected.

Claims 1, 5, 8, 10, 15, and 19 are amended. Claims 20 and 22-24 are canceled. Thus, claims 1-19 and 21 remain pending.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(a)

In the Office Action, claims 1-24 were rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 7,204,059 to *Schiffmann et al.* It is believed, however, that 35 U.S.C. § 102(e) is the more appropriate section under which this reference should have been applied. Applicant assumes for purposes of this Amendment that *Schiffmann et al.* was applied under the appropriate section of 35 U.S.C. § 102 and responds accordingly.

Initially, Applicant wishes to point out that the language of original claims 1-24 was not selected and presented in a vacuum, nor should it be examined in a vacuum. The examiner should place himself in the position of a skilled artisan. Terms of art such as "flashing strip," "nailing fin," and "drip edge" have understood meanings to those of skill in the art and such terms should be accorded their understood meanings when analyzing claims and the prior art. For example, one skilled in the art realizes that element 82 in Fig. 9 of *Schiffmann et al.* is not a "flashing strip" and that element 40 is not a "nailing flange." Accordingly, when properly considered in context and from the perspective of a person of ordinary skill in the art, claims 1-24, as originally submitted, are believed to be allowable over *Schiffmann et al.* The reference

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 8 of 13

simply does not teach or suggest, for example, a plastic member attached to a head jamb that defines both a flashing strip and a nailing fin as a skilled artisan understands those terms.

Nevertheless, claims 1-24 have now been amended, not for reasons related to patentability, but rather to clarify and include more explicitly the structure of terms used in the claims so that the distinctions between applicant's claimed invention and the art are more apparent. These claims continue to be allowable in view of the following discussion.

Schiffmann et al. discloses various configurations of a temporary removable plastic door jamb guard that clips onto a door and covers and protects from damage the inwardly facing otherwise exposed faces of the jambs (See Fig. 1 of *Schiffmann et al.* wherein the guard 36 clips onto the door jamb at the stop 24 and trim 10 and covers the inwardly facing jamb face 22 to protect it from damage). Fig. 9 of *Schiffmann et al.*, relied upon in the office action as including the elements of the claims, represents an embodiment of such a guard. In this embodiment, the plastic guard temporarily clips to a jamb between the brick mold or trim 94 and the stop adjacent weather stripping 28 (see Fig. 10). It is formed with a central section 40 that overlies the inside face of the jamb and an outer leg section 52 that overlies the trim or brick mold along the outside of the jamb. The guard is held temporarily in place with a compressive friction fit provided by the flexible friction tabs 60, which bear against the stop and the outside edge of the jamb respectively. Tear line 100 is provided so that the tab 92, which temporarily covers the outside edge of the trim, can be torn away and removed for installing siding, brick, or other façade against the trim. Finally, tear line 101 is provided to permit the guard to be used on narrower than standard jambs. In these situations, the central section 40 can be separated along the tear line 101 with the resulting edges being overlapped and tapped together using tape 120T. (See

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 9 of 13

generally column 16, line 48 through column 19, line 29). Noteworthy is that *Schiffmann et al.* nowhere disclose or discuss flashing nor does *Schiffmann et al.* disclose or discuss nailing fins for use in attaching a door frame to the surrounding structure of a rough opening. These omissions are understandable since *Schiffmann et al.* are concerned with covering and temporarily protecting the otherwise exposed inwardly facing surfaces of the jambs. Both flashing and nailing fins are applied around the outer facing surfaces of jambs and molding and are permanent; i.e. they are part of and remain with the door frame.

In contrast to the guard of *Schiffmann et al.*, claim 1, as amended, recites a frame comprising a sill, a pair of side jambs, and a head jamb. A unitary plastic member is attached to the head jamb and is configured to define three specific elements of the frame; a flashing strip (37), a nailing fin (22), and a drip edge (21) (Fig. 2).

The claimed flashing strip is recited in claim 1 as overlying and covering an upwardly facing top surface (27) of the head jamb to inhibit moisture contact with the head jamb.¹ Rain water that might run down a building's façade above the frame is intercepted by the flashing strip and inhibited from contacting the head jamb. Element 82 in Fig. 9 of *Schiffmann et al.*, which the office action identifies as a flashing strip, is not a flashing strip and it does not overly and protect an upwardly facing top surface of the head jamb as claimed. Instead, element 82 merely spans the gap between the jamb edge and the brick mold along the *inside* or inwardly facing side of the jamb (see Fig. 10).² Further, the entire guard of *Schiffmann et al.* is temporarily attached and designed to be removed after construction activities are complete, so that element 82, even it

¹ Support for this amendment appears in the specification at various locations including at page 2, line 20 (discussing the purpose of flashing) and at page 9, line 13 (describing the flashing strip's position on a door). Further support is found in the drawings, particularly Fig. 2.

² Note that the inside of the jamb or frame is to the left in Fig. 10 of *Schiffmann et al.* and the outside is to the right.

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 10 of 13

were considered a flashing strip (it is not) cannot inhibit moisture contact with the head jamb in the manner of a flashing strip as claimed because it does not remain with the door frame after construction.

Claim 1 further clarifies that the nailing fin, also defined by the unitary plastic member, projects upwardly from the flashing strip and away from the head jamb. Central section 40, which the office action calls the nailing flange, is not a nailing flange. It merely covers the inside face of the jamb. On a head jamb, for instance, element 40 covers the bottom or downwardly facing surface of the head jamb. Central section 40 does not and cannot project upwardly from any flashing strip (even if element 82 were a flashing strip, which it is not) and away from a head jamb as claimed in claim 1. Central section 40, instead, merely extends along the inside face of a jamb. Finally, there is no disclosure or suggestion in *Schiffmann et al.* that central section 40 is used in attaching the frame to an adjacent structure with fasteners extending therethrough as claimed in claim 1. In fact, such would be absurd because the guard of *Schiffmann et al.*, is temporary and designed to be removed easily following construction. Attaching it to a surrounding structure would thwart its intended use. Further, central section 40 is positioned on the inside of the jambs opposite any surrounding structure and thus can't be attached to such structure. Even if a fastener were driven through section 40, the fastener would penetrate the jamb itself and not any surrounding structure, would damage and deface the jamb, the very thing that the *Schiffmann et al.* guard seeks to prevent, and would further render the *Schiffmann et al.* guard inoperable because it would not be temporary and removable as intended.

Finally, *Schiffmann et al.* does not teach the claimed "drip edge" extending along an upper outside corner of the head jamb to direct water away from the flashing strip away from the

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 11 of 13

head jamb as claimed in claim 1.

For at least the forgoing reasons, claim 1 is not anticipated by *Schiffmann et al.* and the initial rejection under 35 USC §102 should be withdrawn.

Claims 2-9 depend from claim 1 and thus also are allowable over *Schiffmann et al.* for at least the same reasons that claim 1 is allowable.

Claim 10, as amended, recites a door assembly with a threshold, a pair of spaced vertical side jambs, a head jamb, and brick mold extending along the jambs. Claim 10 further recites a plastic member securely attached at least to said brick mold along said head jamb with the plastic member defining *both* a permanently attached flashing strip overlying an upper top surface of the brick mold and a removable construction cover to protect the outside face of the brick mold until the construction cover is removed. *Schiffmann et al.* fail to teach a plastic member with these attributes. In fact, the entire guard of *Schiffmann et al.* is to be removed following construction and therefore no part of the guard is permanently attached to the door frame as claimed. Instead, it is precariously held in place with a friction fit grip to insure that the entire guard can be removed easily when desired by simply pulling it off of the door frame. No part of the guard of *Schiffmann et al.* is intended to be left behind and thus no part is permanently attached with another part being removably attached as claimed in claim 10. For at least these reasons, claim 10, as amended, is not anticipated by *Schiffmann et al.* because *Schiffmann et al.* does not teach all of the elements of the claim. Accordingly, claim 10 is allowable and the initial rejection under 35 U.S.C. §102 should be withdrawn.

Claims 11 through 18 depend from claim 10 and thus are allowable for at least the same reasons that claim 10 is allowable. Further, these claims recite additional features not taught by

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 12 of 13

Schiffmann et al., including, without limitation, that the plastic member also defines a drip edge (claim 12) and a nailing fin (claim 15), and that the removable construction cover is attached with a tear away connection (claim 14). Thus dependent claims 11-18 are allowable on their own merits for at least these additional reasons.

Claim 19, as amended, also recites a plastic member extending along at least a head jamb with the plastic member having a permanently attached flashing strip that overlies an upper top surface of the brick mold and a removable construction cover that overlies an otherwise exposed surface of the brick mold. As discussed above, *Schiffmann et al.* does not teach such a structure. The entire guard of *Schiffmann et al.* is to be removed at the end of construction and no part is permanently attached. Also, as pointed out above, no part of the *Schiffmann et al.* guard is a flashing strip in the first place. For at least these reasons, the rejection of claim 19 under 35 U.S.C. §102 should be withdrawn.

Claim 20 is cancelled. Claim 21 depends from claim 19 and thus also is allowable for at least the same reasons that claim 19 is allowable.

Claims 22-24 are cancelled.

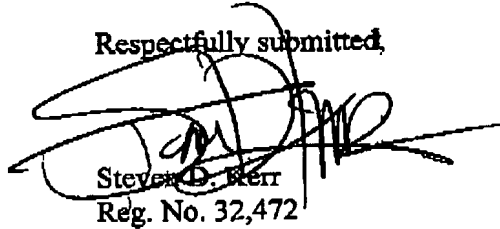
CONCLUSION

In view of the foregoing remarks, the rejection of the claims as set forth in the non-final Office Action of September 5, 2007 has been addressed and overcome. Applicant further submits that all claims are in condition for allowance and requests that a Notice of Allowance be issued. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 962-7524 is earnestly solicited.

Response to Office Action mailed September 5, 2007
U.S. Patent Application No. 10/803,005
Page 13 of 13

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted,



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